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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/815,331	04/01/2004	Matthew Maleska	MAL01 P-101	7542

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EXAMINER

ADDIE, RAYMOND W

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 09/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/815,331

**Applicant(s)**

MALESKA, MATTHEW

**Examiner**

Raymond W. Addie

**Art Unit**

3671

— The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 and 20-34 is/are rejected.
- 7) ☒ Claim(s) 19 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Specification***

1. The abstract of the disclosure is objected to because it appears as though the 1<sup>st</sup> line of the Abstract starts with a "double indentation" such that the 1<sup>st</sup> word of the Abstract is indented too far to the right of the left hand margin.

Correction is required. See MPEP § 608.01(b).

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 7-9, 13 are rejected under 35 U.S.C. 102(b) as being anticipated by Beard # 5,788,405.

Beard discloses a vertical highway marker (153) comprising:

A concrete body (153) forming a wall portion and a base portion having a trapezoidal cross-section. Said wall portion extending upwardly from said base, which is intended for resting on a support surface.

An attachment (157) able to straddling over, and mount to the wall portion and providing at least one mounting surface (162) for mounting an object (155) to said concrete body wherein the object provides at least one of added utility and aesthetics.

See col. 5, ln. 66-col. 6, ln. 21.

In regards to claims 4, 7-9, 13 Beard discloses the attachment (157) has downwardly depending flanges (163, 165) which straddle said wall portion and an upper web (162), which is positioned above the wall portion and has at least one mounting surface. Beard further discloses the attachment (157) further comprises a planar object (155) received between at least two rails (159, 161), such that said planar object includes at least one of signage or a design. See fig. 8.

3. Claims 1-6, 10-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Bishop # 5,052,850.

Bishop discloses a traffic barrier (11) comprising:

A concrete body having a wall portion with generally parallel sides (14, 14') and a base section having a trapezoid-shaped cross-section. Said base intended for resting on top of a support surface.

An object (10), having an attachment portion (19, 25, 26) adapted for mounting to said wall portion by straddling over said wall portion. Said attachment having at least one mounting surface (15) for mounting said object to the concrete body wherein the object provides either added utility or aesthetics to said concrete body.

See Col. 3, ln. 60-col. 4, ln. 37.

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In regards to claims 4-6 Bishop discloses the attachment portion (16, 25, 26) includes downwardly depending flanges (18, 18') that straddle the wall portion and the concrete body has a trapezoid-shaped base and a wall portion having generally parallel sides. See Figs. 3, 4.

In regards to Claims 10-13 Bishop discloses the attachment portion of the object further comprises at least one mounting opening and at least one fastener, such as a bolt extending through said mounting opening in order to secure said attachment portion to said concrete body; and that the attachment portion further comprises an upper web (19) for positioning said object above said wall portion and having at least one mounting surface.

4. Claims 20-22, 25-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Delamere # 4,986,694.

A concrete body (10) having a base (18/24) and a wall portion (12/14) extending up from said base (24).

An attachment (26) having a central member (30) and a pair of downwardly depending members (36, 38). Said depending members (36, 38) straddle the concrete body (10), and depend from said central member.

An open-ended container (34, 34a) provided at said central member (30).

Wherein said open-ended container (34) is either integrally formed with said central member and comprises a unitary member with said central member (30) or said open-ended container (34a) is adapted to releasably couple to said attachment (26).

See col. 2, ln. 30-col. 3, ln. 34.

In regards to Claims 25-29 Delamere discloses the attachment (26) comprises two parts. Said parts forming said pair of downwardly depending members and said central member, when said parts are mounted to said base. Delamere further discloses the attachment can be fastened to said concrete body. See col. 3, lns. 64-66. Or the attachment may be releasably coupled to said concrete body when said attachment is positioned at said top side of said wall portion. Delamere further discloses the wall portion (12/14) of the concrete body is more narrow than the base, thus providing an open space above each lateral side of the base (18/24), wherein the downwardly depending members align in said open spaces when said center member is positioned at a top side of said wall portion. See Fig. 4; col. 2, lns. 30-65.

5. Claims 1, 13-15, 30, 31, 33 are rejected under 35 U.S.C. 102(b) as being anticipated by Thompson # 4,681,302.

Thompson discloses a plurality of different types of traffic barriers (10, 100) comprising: A concrete body (128) having a base and a wall portion. See Fig. 34, 56.

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A primary attachment (101a, 138, 178, 208) having a central web and a pair of downwardly depending flanges depending from said central web, which has a plurality of mounting openings (42, 180). Said depending flanges are capable of straddling said wall portion of said concrete body when said central web is positioned at a top side of said wall portion. See Figs. 32, 34, 35, 56.

A plurality of different types of secondary attachment devices (42a, 86, 86a) releasably coupled to said primary attachment at said central web.

Wherein the secondary attachment includes a plurality of couplers, in the form of a rail (42a) for engaging said mounting openings of said central web of said primary attachment, such that a flag or sign can be mounted above the barrier (10, 100).

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14, 18, 20-22, 25-29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bishop # 5,052,850 in view of Delamere # 4,986,694.

Bishop discloses a traffic barrier having a concrete body (11) and an safety extension (10), having an attachment portion for straddling over said concrete body. What Bishop does not disclose is providing a recess in the upper web (19) of the safety extension.

However, Delamere teaches it is desirable to provide a safety extension (26) capable of straddling over a concrete traffic barrier (10) with a recess (52) disposed within an upper web (34) of the safety extension (26), in order to secure a light or a sign to the top of the safety extension. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the safety extension of Bishop with a recess, disposed in an upper web of the safety extension, as taught by Delamere, in order to provide traffic related information on top of the barrier assembly. See Delamere Col. 3, Ins. 30-43; Figs. 1-3.

7. Claims 16, 17, 32, 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson # 4,681,302 in view of Marsh et al. # 6,782,624 B2.

Thompson discloses an energy absorbing traffic barrier assembly, as put forth with respect to claim 31 above, to include mounting flags and the like to the top of the barrier assembly, in order to make the barrier more noticeable, as well as mounting fencing or shielding to the top of the barrier assembly, in order to prevent debris or vehicles from "vaulting" over the barrier assembly, but does not disclose mounting a planter on top of the traffic barrier assembly. However, Marsh et al. teaches it is desirable to mount planters (1401) on top of composite traffic barriers comprised of a concrete base and a primary attachment assembly (1101), with a plurality of couplers, such as tabs (1403), in order to improve the aesthetic appearance of the barrier assembly.

As well as mounting rails (502) for supporting barb wire on top of the traffic barrier, in



order to prevent pedestrians and animals from jumping over the barrier assembly. See Figs. 5, a, d, 12; Col. 16, Ins. 16-42. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the traffic barrier of Thompson, with a planter assembly, as taught by Marsh et al., in order to increase the aesthetic nature of the barrier assembly. See Marsh et al., Fig. 12

8. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson # 4,681,302 in view of Iving # 3,591,144.

Thompson discloses an energy absorbing traffic barrier assembly, as put forth with respect to claim 31 above, to include mounting flags and the like to the top of the barrier assembly, in order to make the barrier more noticeable, but does not disclose mounting a planter on top of the traffic barrier assembly. However, Iving teaches it is desirable to provide a light assembly, either integrally with or separately mounted on top of a primary attachment device that is capable of straddling a concrete barrier or guard rail or the like. Iving teaches light assemblies mounted on top of traffic barriers increases driver awareness and safety in night-time driving conditions. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide a light assembly on top of the traffic barrier of Thompson, in order to increase safety on the roadway during night-time conditions.

***Allowable Subject Matter***

9. Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

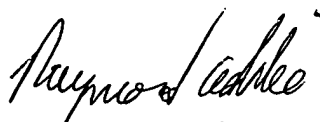
10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schimmelpenninck et al. # 3,288,440 discloses a planter for use in roadways. Schmanksi # 4,249,832 discloses a highway barrier assembly. Brantley # 4,751,893 discloses an anti-glare screen for use on top of traffic barriers. Paniccia # 6,733,204 B1 discloses a view shield for use on top of concrete barriers. Consolazio et al. # 6,767,158 discloses a portable roadway barrier.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond W. Addie whose telephone number is 703 305-0135. The examiner can normally be reached on 8-2, 6-8.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703 308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



**Raymond Addie**  
**Patent Examiner**  
**Group 3600**

**9/17/2004**